

**ORIGINAL**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )

DOCKET FILE COPY ORIGINAL

UNITY TELEPHONE COMPANY )

d/b/a/ UNITEL, INC. )

CC Docket No. 96-45

Petition for Waiver of the Section 54.904(d) )

Interstate Common Line Support )

Self-Certification Filing Deadline )

**RECEIVED**

FEB 17 2005

TO: Chief, Wireline Competition Bureau

Federal Communications Commission  
Office of Secretary

**PETITION FOR WAIVER - EXPEDITED ACTION REQUESTED**

Unity Telephone Company d/b/a UniTel, Inc. ("UniTel" or the "Company"), pursuant to Section 1.3 of the Commission's rules,<sup>1</sup> hereby requests a waiver, to the extent necessary, of Section 54.904(d) of the rules of the Federal Communications Commission (the "Commission" or "FCC") to reflect acceptance of its Interstate Common Line Support ("ICLS") self-certification effective June 30, 2004.<sup>2</sup> As the facts make clear, UniTel executed and transmitted to the Commission and the Universal Service Administrative Company ("USAC") the necessary ICLS certification on May 28, 2004 (the "2004 Certification"), only to learn for the first time in late December 2004 that there was a question regarding receipt of the 2004 Certification by the Commission and USAC. For the reasons stated herein, UniTel respectfully submits that an expedited grant of this request would serve the public interest by allowing the disbursement to

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<sup>1</sup> 47 C.F.R. §1.3.

<sup>2</sup> See 47 C.F.R. §§ 54.904(a) and (d).

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014

the Company of ICLS, as those funds are used to maintain the level of universal service in the rural areas that UniTel serves.

## **I. BACKGROUND**

In order to be eligible for ICLS, rate-of-return carriers are required to make an annual filing certifying that all ICLS provided to the carrier will "be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."<sup>3</sup> With the exception of a carrier's first certification (which is filed when the carrier files its line count information for the very first time), the annual certification must be filed on June 30 of each year with the Commission and USAC.<sup>4</sup>

Consistent with its standard mailing practice, UniTel's President, Laurie Osgood, executed UniTel's 2004 Certification on May 28, 2004. On that date, Ms. Osgood directed her colleague, Nicole Brown, to mail the 2004 Certification to the Commission and USAC. Ms. Brown made these mailings using UniTel's normal business practice for documents of this type, which included ensuring that a file copy of the document was made, and overseeing and ensuring that the item to be mailed was properly addressed, stamped, and placed in the out-going mail.<sup>5</sup> This practice was undertaken in good faith, and was the same used by UniTel for its June 10, 2003 ICLS certification (the "2003 Certification"), a copy of which was received at the

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<sup>3</sup> 47 C.F.R. §54.904(a).

<sup>4</sup> 47 C.F.R. §59.904(d).

<sup>5</sup> Attached hereto are the declarations of Nicole Brown and Laurie Osgood, attesting to the facts and circumstances within their knowledge surrounding the submission of the 2004 Certification. See Attachment A. The declarations bear facsimile signatures. Counsel will supplement this filing with the original declarations when they are received. Attachment B is a copy of the Company's executed 2004 Certification.

Commission's mailroom on June 16, 2003. *See* Attachment C.<sup>6</sup> As reflected on USAC's webpage, the 2003 Certification was received by USAC, as well.<sup>7</sup>

On May 28, 2004, Ms. Osgood also faxed to the National Exchange Carrier Association, Inc. ("NECA") a copy of the 2004 Certification that was mailed to USAC and the Commission. *See* Attachment E.<sup>8</sup> NECA functions as a clearinghouse for the receipt and disbursements of ICLS for its pool participants since, as the Commission is aware, the recovery from the ICLS was formerly achieved through the interstate Carrier Common Line rates included in the NECA tariff.<sup>9</sup>

UniTel is an issuing carrier of the NECA Tariff F.C.C. No. 5. *See* 47 C.F.R. § 69.3(d). As part of its participation in the NECA pooling process, UniTel's ILCS information is provided to USAC by NECA. Once this is completed, NECA sends a copy of that information to UniTel for its records. UniTel understands that USAC then calculates the ICLS amount that UniTel will receive and conveys that information to NECA. NECA, in turn, communicates this information to UniTel. Attachment G contains the information for the July 1, 2004 to June 30, 2005 period

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<sup>6</sup> UniTel also faxed a copy of the 2003 Certification to the National Exchange Carrier Association, Inc. ("NECA"). UniTel attaches hereto a copy of the Company's toll record indicating that facsimile was sent on June 25, 2003. *See* Attachment D.

<sup>7</sup> *See* <http://form498.universalservice.org/hc/disbursements> (visited Feb. 4, 2005).

<sup>8</sup> NECA's letter confirming receipt of the fax is enclosed as Attachment F. UniTel is a participant in the NECA pooling process. *See, e.g., In the matter of Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers: Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, CC Docket Nos. 00-256, 96-45, 98-77, 98-166, 16 FCC Rcd 19613 (2001) (the "MAG Order") at 19624.*

<sup>9</sup> *See, generally MAG Order, 16 FCC Rcd at 19667-19688.*

applicable to the Company's 2004 Certification.

Shortly before the end of 2004, UniTel was informed for the first time by NECA that there was a question raised by USAC regarding the 2004 Certification and, specifically, that USAC could not verify that it had received the 2004 Certification on or before June 30, 2004.

In an effort to verify receipt, UniTel immediately began the process of verifying the underlying facts. To date, all searches have been unable to verify that the Commission or USAC received the 2004 Certification. UniTel then resent its 2004 Certification to the Commission and USAC on December 30, 2004. *See* Attachment H. USAC's website records that the certification was received January 3, 2005.<sup>10</sup>

Until the first contact from NECA in late December 2004, UniTel continued to receive settlements from NECA equal to the difference between its interstate common line revenue requirements and revenues during 2004, which amounted to approximately \$240,000.00, for the six month period ending December 31, 2004. NECA has now required UniTel to adjust pool settlements downward to reflect ICLS shortfalls pending Commission action on this waiver request. However, in a manner fully consistent with its 2004 Certification, UniTel has utilized these funds for the provision, maintenance and upgrading of facilities and services for which its ICLS disbursements are intended.<sup>11</sup>

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<sup>10</sup> *See* <http://www.universalservice.org/hc/checklist> (visited Feb. 17, 2005).

<sup>11</sup> *See also* 47 U.S.C. 254(e).

## **II. A GRANT OF THE REQUESTED RELIEF WOULD SERVE THE PUBLIC INTEREST**

Pursuant to Section 1.3 of the Commission's rules, the Commission may grant a waiver of the application of any of its rules for "good cause shown."<sup>12</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>13</sup> In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>14</sup> Waiver of the Commission's rules is therefore appropriate if special circumstances warrant a deviation from the general rule, and if such deviation will serve the public interest.

UniTel respectfully submits that these factors apply to the circumstances confronting it and the effect that will be experienced absent an expedited grant of this request. Thus, strict application of the June 30 deadline for submission of the 2004 Certification would be contrary to the public interest, particularly where UniTel submitted its 2004 Certification for filing by U.S. Mail in a timely manner following its normal mailing practice and is corroborated independently by the fact that UniTel also faxed its 2004 Certification to NECA on the very same day as the mailing. Further, allowing UniTel to receive ICLS during the entire 12 month period covered by the 2004 Certification (*i.e.*, July, 1 2004 through June 30, 2005) will not cause any harm or burden for any other party.

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<sup>12</sup> 47 C.F.R. §1.3.

<sup>13</sup> *See Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (DC Cir. 1990) ("*Northeast Cellular*").

<sup>14</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (DC Cir. 1969); *Northeast Cellular* at 1166.

ICLS represents specifically allocated interstate cost recovery of the portion of UniTel's loop investment used by interstate service providers to originate and terminate their interstate services in the rural area of Maine that UniTel serves.<sup>15</sup> ICLS contributes significantly to UniTel's financial ability to provision, upgrade, and maintain its facilities. UniTel's ICLS in 2004 was \$86.46 annually per line or \$7.21 per line per month. Absent a grant of this waiver, these costs will go unrecovered since there is no specific provision within the rule to reallocate these costs to the Company's recovery from Subscriber Line Charge or other universal service mechanisms or the state jurisdiction. The resulting under-recovery -- antithetical in and of itself to the public interest -- would necessarily require curtailment and/or reevaluation of UniTel's plans for capital expenditures and network improvements if ICLS disbursements were not available to it. Therefore, absent an expedited grant of this request, the uncertainty associated with the level of ICLS disbursements that UniTel can expect to receive will result in the frustration of the underlying universal service purposes in a manner directly at odds with the public interest.

Based on the circumstances presented, UniTel's good faith reliance on U.S. Mail for the filing of its Certification with the Commission and USAC was entirely reasonable. UniTel had used the U.S. Mail in June 2003, and had no reason to believe or expectation that the 2004 Certification would not similarly be received on a timely basis, particularly since it was sent 33 days prior to the June 30, 2004 deadline. As the facts demonstrate, UniTel's 2003 Certification was executed on June 10, 2003, and received on June 16, 2003. Accordingly, UniTel had every

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<sup>15</sup> See *MAG Order*, 16 FCC Rcd at 19668, 19682; see also 47 C.F.R. §54.901(a) ("Interstate Common Line Support available to rate-of-return carrier shall equal the Common Line Revenue Requirement per Study Area as calculated in accordance with part 69 of this Chapter.").

expectation that this same result would occur when it mailed the 2004 Certification in May 2004. As already been recognized by the Commission, UniTel's reliance on the U.S. Mail was entirely reasonable.

The Commission has acknowledged that it will accept evidence regarding mailing as "acceptable proof"<sup>16</sup> that the document was, in fact, sent. With regard to such "evidence," the Commission has relied upon a Ninth Circuit decision holding that a sworn statement is credible evidence of mailing.<sup>17</sup> In so ruling, the Commission also cited with approval the District of Columbia Circuit's statement that "proof that mail matter is properly addressed, stamped [and] deposited in an appropriate receptacle has long been accepted as evidence of delivery to the addressee."<sup>18</sup> Application of these very same principles to UniTel's circumstances is reasonable and appropriate.

The declarations of Ms. Osgood and Ms. Brown explaining the steps taken in executing the 2004 Certification, having it mailed, and then subsequently faxed on that same day to NECA, are fully consistent with the proof found acceptable by the Commission previously. Application of the principles of *Communications Vending* is entirely appropriate here. The effects of not doing so would be contrary to the public interest.

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<sup>16</sup> *Communications Vending Corporation of Arizona, Inc., et al. v. Citizens Communications Company f/k/a Citizens Utilities Company and Citizens Telecommunications Company d/b/a Citizens Telecom, et al.: Memorandum Opinion and Order*, File Nos. EB-02-MD-018-030, FCC 02-314, 17 FCC Rcd 24201, citing *Legille v. Dann*, 544 F.2d 1, 4 (DC Cir. 1976) ("Communications Vending") at 24229.

<sup>17</sup> *Id.*, citing *Schikore v. BankAmerica Supplemental Retirement Plan*, 269 F.3d 956, 964 (9<sup>th</sup> Cir. 2001).

<sup>18</sup> *Communications Vending* citing *Legille v. Dann*, 544 F.2d 1, 4 (DC Cir. 1976).

Denial of ICLS to UniTel in a case in which it undertook reasonable, good faith efforts to ensure timely compliance with the filing deadline would subject UniTel to the burdens associated with denial of the ICLS disbursement. Further, UniTel believes that a grant of this waiver request can be easily accommodated by USAC, without burden to any other carrier, within the existing universal service process.

Specifically, UniTel filed its line-count and other projected data necessary to calculate its prospective ICLS timely,<sup>19</sup> and that information was received by USAC. *See* Attachment G. Thus, not only did USAC have actual notice by March 31, 2004, but USAC had at least some level of notice that the omission of what had been a regular and periodic stream of filings and ICLS participation (including the fact that USAC was in receipt of the 2003 Certification) was, most likely, not an error on the Company's part.

In light of its line count and projected cost submission in March of 2004, UniTel fully anticipates that its projected ICLS disbursement level of the 12 month period ending June 30, 2005 was included in USAC's calculations of the fund size and contributions levels for the period at issue,<sup>20</sup> as reflected on USAC's website.<sup>21</sup> Although UniTel resubmitted the 2004 Certification on December 30, 2004, and USAC has acknowledged its receipt effective January

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<sup>19</sup> *See, generally*, 47 C.F.R. §54.903.

<sup>20</sup> *Compare* 47 C.F.R. §54.903(a)(3)(Rate of return carrier submission required of "projected data necessary to calculate the carrier's prospective Interstate Common Line Support, including common line cost and revenue data, for each of its study areas in the upcoming funding year") *and* 47 C.F.R. §§54.903(b)(1) and (4)(In addition to performing the calculation required to establish the ICLS, USAC also directed to "[c]ollect the funds necessary to provide support pursuant to this subpart. . . .").

<sup>21</sup> *See* <http://www.universalservice.org/overview/filings/2005/Q1/HC01%20-%20High%20Cost%20Support%20Projected%20by%20State%20by%20Study%20Area%20-%20Q2005.xls> , at page 13 (visited Feb. 17, 2005).



3, 2005, the Company's request for waiver encompasses the July 2004 through June 2005 period, or as much of this period as the Commission determines UniTel is not otherwise eligible to receive ICLS based on the resubmission of its Certification in December 2004.

### **III. REQUESTED FOR EXPEDITED ACTION**

Unless and until the Commission grants UniTel's request, the Company will experience a significant cost recovery shortfall. As stated above, ICLS disbursements are needed and used by UniTel as an integral component of its interstate recovery with respect to its ongoing costs and capital improvements to upgrade its network. On behalf of UniTel, NECA has already submitted the projected data to USAC, and it appears that USAC is fully capable of incorporating this data (to the extent such data has not been incorporated already) and continuing to distribute ICLS. Moreover, expedited action will allow USAC to reflect this correction in the overall universal service plan as soon as possible. UniTel submits that facts surrounding the instant events, the policy considerations associated with the grant of waiver request, and the implications of granting the waiver are straightforward and raise no novel question of law that the Commission has not previously addressed.

Accordingly, UniTel requests expedited action by the Commission so that USAC can be notified properly and promptly, and so that future settlements, ICLS disbursements, and USAC's calculations can be corrected as soon as possible and to the extent necessary. In the absence of expedited action, UniTel may be forced to forego recovery, and curtail, delay, or reduce planned network upgrades and other capital projects. This result would impose needless hardship on UniTel, and is inconsistent with universal service objectives.

#### **IV. CONCLUSION**

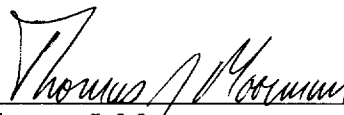
For the reasons stated herein, UniTel respectfully submits that good cause has been shown for the grant of the requested waiver as set forth herein. Grant of the waiver will enable UniTel to receive ICLS disbursements for the 12 month period covered by the 2004 Certification consistent with the statutory goal of preserving and advancing universal service for the rural customers served by UniTel. This result is and will be consistent with the public interest. For the reasons stated herein, UniTel also respectfully submits that expedited action on this request is justified in order to minimize the time that UniTel will be prevented from receiving the ICLS support that it expected to receive.

Accordingly, UniTel respectfully requests that the Commission grant this request and accept UniTel's 2004 ICLS Certification effective June 30, 2004.

Respectfully submitted,

**Unity Telephone Company d/b/a UniTel, Inc.**

By:

  
\_\_\_\_\_  
Thomas J. Moorman  
David Cosson  
Joshua Seidemann  
Kraskin, Moorman & Cosson, LLC  
2120 L Street, N.W., Suite 520  
Washington, D.C. 20037  
Tel. (202) 296-8890  
Fax (202) 296-8893

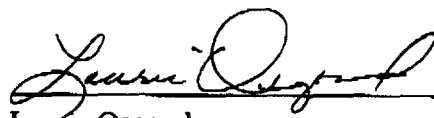
February 17, 2005

**ATTACHMENT A**  
**DECLARATIONS OF LAURIE OSGOOD**  
**and NICOLE BROWN**

Declaration of Laurie Osgood  
President, UniTel, Inc.

I, Laurie Osgood, President of UniTel, Inc., do hereby declare under penalties of perjury that I have read the foregoing "Petition for Waiver – Expedited Action Requested" and the information contained therein is true and accurate to the best of my knowledge, information, and belief.

Date 2.17.05

  
Laurie Osgood  
President, UniTel, Inc.

Declaration of Nicole Brown  
Revenue Accountant

I, Nicole Brown, Revenue Accountant, UniTel, Inc., do hereby declare under penalties of perjury that I have read the foregoing "Petition for Waiver - Expedited Action Requested" and the information contained therein is true and accurate to the best of my knowledge, information, and belief.

Date 2.17.05

Nicole Brown

Nicole Brown  
Revenue Accountant

**ATTACHMENT B**

**2004 UNITEL SELF-CERTIFICATION**

# UNITEL

INCORPORATED®

May 28, 2004

To: Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Irene M. Flannery  
Vice President – High Cost & Low Income Division  
Universal Service Administrative Company  
2000 L Street, N.W.  
Suite 200  
Washington, D.C. 20036

Re: **Interstate Common Line Support**  
Annual Certification Filing  
CC Docket No. 96-45

This is to certify that UniTel, Inc will use its **Interstate Common Line Support** only for the provision, maintenance, and upgrading of facilities and service for which the support is intended.

I am authorized to make this certification on behalf of the company named above. This certification is for the study area(s) listed below:

Company Name	State	Study Area Code
UniTel, Inc	ME	207

(If necessary, attach a separate list of additional study areas and check this box.) ☐

Laurie Osmond  
[Signature of Authorized Representative]

Date: May 28, 2004

Laurie Osmond  
[Printed Name of Authorized Representative]

President / COO  
[Title of Authorized Representative]

**ATTACHMENT C**

**2003 UNITEL SELF-CERTIFICATION**  
***Displaying Receipt Date-Stamp of FCC***



June 10, 2003

To: Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445-12<sup>th</sup> Street, SW  
Washington, DC 20554

RECEIVED & INSPECTED

JUN 16 2003

FCC - MAILROOM

Irene M. Flannery  
Vice President – High Cost and Low Income Division  
Universal Service Administrative Company  
2120 L Street, NW, Suite 600  
Washington, DC 20037

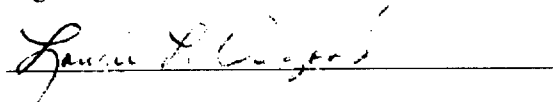
RE: CC Docket No. 96-45  
Interstate Common Line Support and Long Term Support – ICLS  
Annual Certification Filing

This is to certify that UniTel, Inc. will use its Interstate Common Line support and Long Term Support – ICLS only for the provision, maintenance, and upgrading of facilities and service for which the support is intended.

I am authorized to make this certification on behalf of the company named above. This certification is for the study area listed below.

Company Name	State	Study Area Code
UniTel, Inc.	Maine	100029

Signed.



Date: June 10, 2003

Laurie L. Osgood

Printed Name of Authorized Representative

President & COO

Title of Authorized Representative

Carrier's Name: UniTel, Inc.  
Carrier's Address: 129 Main Street, Unity, ME 04988  
Carrier's Telephone Number: 207-948-3900

129 Main Street, P.O. Box 165, Unity ME 04988-0165  
207-948-3900 FAX 207-948-3021

**ATTACHMENT D**

**TOLL RECORD OF FAX TRANSMISSION OF  
2003 UNITEL SELF-CERTIFICATION TO NECA  
*and Copy of Fax Cover Sheet***

# UNITEL

INCORPORATED®

DATE: June 25, 2003

TO: GARY Hannon - NECA

FROM: Beth Oster

fax # 800-228-8563

SUBJECT: ICLS/LTS Annual Cert. Filing

NUMBER OF PAGES: 2 (INCLUDING COVER PAGE)

MESSAGE: Apologize that you didn't get a copy. Will  
make sure you do in future

If you have problems or questions regarding this  
Transmission, please contact:  
Customer Services at 207-948-3900

129 Main Street, P.O. Box 165, Unity ME 04988-0165 207-948-3900 Fax 207-948-3021

Structure Code	Call Type	Date of Call	From NPA	From Number	To NPA	To Number	Connection Time	Conversation Duration	Carrier Code	Total Call Duration	Trunk Group		
625	110	36	30625	207	9483021	800	2288563	HHMMSS	HHMMSS	389	2881	505	30176

**ATTACHMENT E**

**FAX OF MAY 28, 2004 TO NECA  
SUPPORTED BY FAX MACHINE "ACTIVITY REPORT"**

# UNITEL

INCORPORATED®

Date: 5 28

To: Gary 800 228 8543

From: NICKI

Subject: CLS

Number of pages: 2 (including cover page)

Message: \_\_\_\_\_

*If you have problems or questions regarding this transmission, please  
contact: Unitel's Finance Department at 207-948-3900  
Fax: 207-948-3845*

129 Main Street, PO Box 165, Unity ME 04988-0165, Tel. 948-3900 Fax 207-948-3845

# UNITEL

INCORPORATED®

May 28, 2004

To: Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Irene M. Flannery  
Vice President – High Cost & Low Income Division  
Universal Service Administrative Company  
2000 L Street, N.W.  
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Washington, D.C. 20036

Re: **Interstate Common Line Support**  
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This is to certify that UniTel, Inc will use its **Interstate Common Line Support** only for the provision, maintenance, and upgrading of facilities and service for which the support is intended.

I am authorized to make this certification on behalf of the company named above. This certification is for the study area(s) listed below:

Company Name	State	Study Area Code
UniTel, Inc	ME	207

(If necessary, attach a separate list of additional study areas and check this box.) ☐

Laurie Osgood  
[Signature of Authorized Representative]

Date: May 28, 2004

Laurie Osgood  
[Printed Name of Authorized Representative]

President / COO  
[Title of Authorized Representative]

# ACTIVITY REPORT

TIME : 05/28/2004 08:10  
 NAME :  
 FAX : 2079483845  
 TEL : 2079483845  
 SER.# : BROF2J436846

NO.	DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
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	05/14	14:25		24	01	OK	RX ECM
	05/15	23:32		39	01	OK	RX ECM
	05/15	23:40		39	01	OK	RX ECM
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	05/17	10:05		01:13	02	OK	RX ECM
	05/17	10:30		01:20	02	OK	TX ECM
	05/18	18:44		41	01	OK	RX ECM
	05/18	20:01		40	01	OK	RX ECM
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	05/19	02:43		37	01	OK	RX ECM
	05/19	10:48		38	01	OK	RX ECM
	05/20	11:13		01:29	05	OK	TX ECM
	05/21	07:28		02:29	14	OK	TX ECM
#007	05/21	08:39	CSS	52	03	OK	TX ECM
#008	05/21	08:39	2872156	39	03	OK	TX ECM
#009	05/21	08:48	5526820	37	02	OK	TX ECM
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#012	05/21	13:04	9929992	01:04	02	OK	RX ECM
	05/22	22:06		01:05	02	OK	RX ECM
	05/22	22:11		57	02	OK	TX ECM
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	05/26	14:03		49	02	OK	RX ECM
	05/26	15:32		01:18	02	OK	RX ECM
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	05/27	09:49		35	02	OK	RX ECM
#016	05/27	15:18	9486490	01:05	04	OK	TX ECM
	05/28	02:56		01:05	02	OK	RX ECM
	05/28	03:00		01:05	02	OK	RX ECM
#017	05/28	08:10	18002288563	31	02	OK	TX ECM

BUSY: BUSY/NO RESPONSE  
 NG : POOR LINE CONDITION / OUT OF MEMORY  
 CV : COVERPAGE  
 POL : POLLING  
 RET : RETRIEVAL  
 PC : PC-FAX



**ATTACHMENT F**

**NECA LETTER CONFIRMING RECEIPT  
OF MAY 28, 2004 FAX TRANSMISSION**